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OFFICE OF PETITIONS

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In re Application of
Goodrich Jr. et al.
Application 09/596,429
Filed: June 15, 2000
Atty Docket No. 27-98B

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: DECISION GRANTING PETITION
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This decision is in response to applicant's "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. 1.705" timely¹ filed on April 14, 2006. Applicants' request that the patent term adjustment at the time of the notice of allowance be adjusted to reflect a determination of seven hundred and seven (707) days.

The application for patent term adjustment is **GRANTED**. The Office will adjust the PTA calculation to reflect a PTA amount of seven hundred and seven (707) days at the time of the mailing of the notice of allowance.

Applicants assert that the Office erred in assessing a PTA delay of 133 days under 37 CFR 1.704(b) for the reply to the non-final rejection received by the Office on January 14, 2005. Applicants assert that the response was only 44 days delayed because the Office mailed a notice restarting applicants' response clock.² Accordingly, applicants assert that the applicant should receive an additional 89 days of patent term and that such amount should be 707 days of PTA at the time of the mailing of the notice of allowance. Applicants did not contest any of the other delays, either applicant or USPTO.

Applicants' arguments are persuasive. A review of the file reveals that the Office did mail a notice to applicants on September 1, 2004 restarting the period of response. Accordingly, applicants could reply on/before December 1, 2004 without any PTA penalty under 37 CFR 1.704(b). Because applicants' response was filed on January 14, 2005, a delay of 44 days should have been assessed. The one hundred and thirty-three (133) day assessment was in error. Accordingly, the correct amount of USPTO delay is 780 days (727 days pursuant to 37 CFR 1.702(a)(1) and 53 days pursuant to 37 CFR 1.702(a)(2)). Applicants delay amount to 73 (44 +

¹Issue fee paid on April 14, 2006.

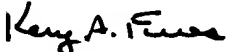
²The Office mailed the Office action on 6/3/2004 and mailed a letter to applicants on 9/1/2004 notifying applicants that the response period had been restarted.

29) days pursuant to 37 CFR 1.704(b). Accordingly, 707 days of PTA is proper ($780-73=707$).

After the mailing of this Office action, the file will be forwarded to the Office of Patent Publication for a prompt issuance of the patent. Any USPTO delays under 37 CFR 1.702(a)(4) or 1.702(b) will be added to the determination at the time of the issuance of the patent and will be reflected in the issue notification letter that is mailed to applicants approximately three weeks prior to issuance.

The \$200.00 application fee has been assessed. No additional fees are required. The Office had additionally assessed a \$400.00 fee that was not required. Accordingly, the Office will refund \$400.00.

Any questions directed to this application should be directed to Kery A. Fries, Senior Legal Advisor, at 571-272-7757.



Kery Fries
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner for Patent
Examination Policy

cc: Copy of Adjusted PAIR calculation